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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,042	12/15/2003	Lester F. Ludwig	2738-033	4753
616	7590	05/19/2006	EXAMINER	
THE MAXHAM FIRM 750 "B" STREET, SUITE 3100 SAN DIEGO, CA 92101			WARREN, DAVID S	
			ART UNIT	PAPER NUMBER

2837

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/737,042

Applicant(s)

LUDWIG, LESTER F.

Examiner

David S. Warren

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All. b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

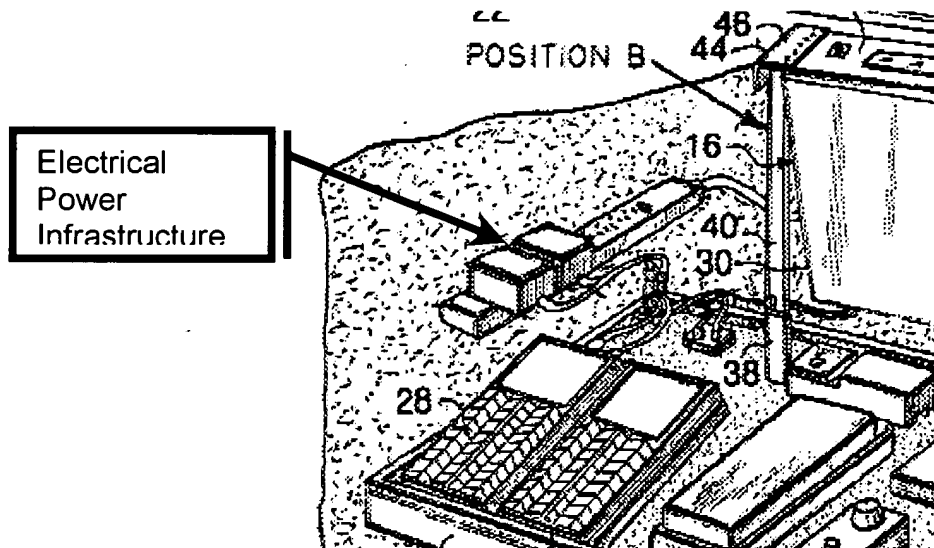
1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

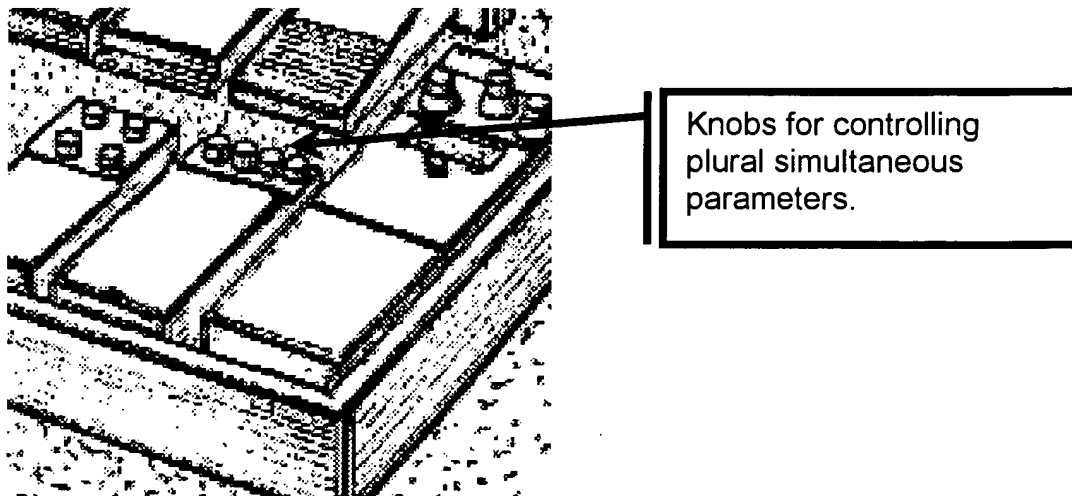
2. Claims 1 – 10 and 12 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pecoraro (5,866,829). Regarding independent claims 1 and 15, Pecoraro discloses the use of plural foot controllers (14, 26; figs. 3 and 7), mounting frame and means for securing modules, i.e., foot controllers are retained within the frame (12, 20, 22), and a signal interface (16) for transmitting interface signals to an external device (e.g., an amplifier). Pecoraro does not disclose the use of individual foot controllers which are readily positionable (i.e., adjustable position) within any of a plurality of mounting locations of the mounting frame. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the modules of Pecoraro readily positionable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954). The motivation for making the Pecoraro modules position-adjustable would be to allow, say, someone not comfortable balancing on his or her right foot to move a module so that balancing could be accomplished on the musicians

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left foot. Regarding claims 2 and 16, Pecoraro shows an electrical power infrastructure (unnumbered, see excerpt from fig. 3):



Regarding claim 3, pedals (26, fig. 3) disclose the use of switches. Regarding claim 4, Pecoraro discloses the use of foot pedals (28, fig. 3). Regarding claim 5, while Pecoraro is silent as to foot pedals that provide a simultaneous "plurality of adjustable parameters," Official Notice is taken that the foot pedals shown in Pecoraro's figure 3 possess control knobs for adjusting parameters that are simultaneously provided to an external device;



Regarding claims 6 – 10, 12, 17 and 18, the Examiner maintains that any pedal (especially the rocker-type) will provide tactile control (i.e., the user can physically feel the degree to which a pedal is activated), all pedals shown by Pecoraro will be activated in accordance with pressure and/or impact. Regarding claim 14, Pecoraro shows in fig. 3, that interface (16) is mounted to frame (20) via elements (38). Regarding claim 13, the use of “organ-style bass pedals” is deemed to be functionally equivalent to any (especially the rocker-type) pedals shown in fig. 3 – organ-style pedals are essentially pivotal lever activated switches.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pecoraro (discussed supra) in view of Gillaspy (5,506,371). Regarding independent claim 1, the teachings of Pecoraro have been discussed supra. Pecoraro does not teach the use of a strum pad operating as a foot pedal. Gillaspy discloses that strum pads may be substituted for foot pedals (col. 4, lines 3 – 5). It would be obvious to one of ordinary skill in the art to combine the teachings of Pecoraro and Gillaspy to obtain a floor controller having a strum pad control unit. The motivation for making this combination is to complement the degree to which control can be made from the feet, thus freeing the hands.

#### ***Response to Arguments***

5. Applicant's arguments, filed March 7, 2006, with respect to the rejection(s) of claims 1 – 10 and 12 – 18 under 35 U.S.C 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Applicant's points regarding a "readily positionable" foot controller module. The Applicant argues that Pecoraro does not disclose a positionable module. As stated supra, the Examiner concurs, however, merely providing an adjustable position has been determined by the courts to be obvious to one of ordinary skill. The Applicant noted that Pecoraro's modules are conventional modules such as wah-wahs, etc. Wah-wah pedals require the musician to balance on one leg while controlling the wah-wah with the other foot. Many people find one foot more suitable for balancing – therefore, one of ordinary skill would think to allow a musician to place the wah-wah (i.e., make positionable) on the

side most comfortable to provide balancing. Assuming *arguendo*, many musicians also need access to a microphone, thus it would not be convenient for a musician to move (as opposed to moving the module) to accommodate better balancing.

6. The Applicant also argues that Pecoraro discloses “retaining” modules and that retaining allows positioning in “only one position.” The Examiner does not concur. The modules of Pecoraro could be both retained and readily positionable. For example, while using and or transporting the foot controllers, it is important to keep them in a position. But this does not preclude rearranging of the modules.

7. The Applicant also argues that the modules of Pecoraro do not generate an electrical signal. The Examiner does not concur. The Applicant’s specification appears to have defined “generating” as a foot-switch (see paragraphs 274 and 280 of the printed publication of the instant application). Furthermore, the instant application refers to publication 2002/0005111 to further define “generating” in accordance with six parameters (see paragraphs 257 – 267 of 2002/0005111). The “six parameters” are used to control pitch, volume, pan, and filtering. All of which are processing an audio signal – as taught by Pecoraro. The Applicant’s arguments do not appear to be consistent with the specification. Furthermore, it is reasonable to interpret Pecoraro as generating a fuzz tone, or generating a chorus effect. The Applicant’s arguments are not persuasive.


**Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached at 571-272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dsw

  
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